

97TH CONGRESS
2D SESSION

S. 2240

To amend title 5, United States Code, to provide permanent authorization for Federal agencies to use flexible and compressed employee work schedules.

IN THE SENATE OF THE UNITED STATES

MARCH 18 (legislative day, FEBRUARY 22), 1982

Mr. STEVENS (for himself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend title 5, United States Code, to provide permanent authorization for Federal agencies to use flexible and compressed employee work schedules.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Employees Flexi-
4 ble and Compressed Work Schedules Act of 1982".

5 SEC. 2. (a) Chapter 61 of title 5, United States Code, is
6 amended—

7 (1) by inserting before section 6101 the following:

1 "SUBCHAPTER I—GENERAL PROVISIONS";

2 and

3 (2) by adding at the end thereof the following new
4 subchapter:

5 "SUBCHAPTER II—FLEXIBLE AND COMPRESSED
6 WORK SCHEDULES

7 "§ 6120. Purpose

8 "The Congress finds that the use of flexible and com-
9 pressed work schedules has the potential to improve produc-
10 tivity in the Federal Government and provide greater service
11 to the public.

12 "§ 6121. Definitions

13 "For purposes of this subchapter—

14 "(1) 'agency' means any Executive agency, any
15 military department, and the Library of Congress;

16 "(2) 'employee' has the meaning given it by sec-
17 tion 2105 of this title;

18 "(3) 'basic work requirement' means the number
19 of hours, excluding overtime hours, which an employee
20 is required to work or is required to account for by
21 leave or otherwise;

22 "(4) 'credit hours' means any hours, within a
23 flexible schedule established under section 6122 of this
24 title, which are in excess of an employee's basic work

1 requirement and which the employee elects to work so
2 as to vary the length of a workweek or a workday;

3 “(5) ‘compressed schedule’ means—

4 “(A) in the case of a full-time employee, an
5 80-hour biweekly basic work requirement which is
6 scheduled for less than 10 workdays, and

7 “(B) in the case of a part-time employee, a
8 biweekly basic work requirement of less than 80
9 hours which is scheduled for less than 10 work-
10 days;

11 “(6) ‘overtime hours’, when used with respect to
12 flexible schedule programs under sections 6122 through
13 6126 of this title, means all hours in excess of 8 hours
14 in a day or 40 hours in a week which are officially or-
15 dered in advance, but does not include credit hours;
16 and

17 “(7) ‘overtime hours’, when used with respect to
18 compressed schedule programs under sections 6127
19 and 6128 of this title, means any hours in excess of
20 those specified hours which constitute the compressed
21 schedule.

22 **“§ 6122. Flexible schedules; agencies authorized to use**

23 “(a) Notwithstanding section 6101 of this title, each
24 agency may establish, in accordance with this subchapter,

1 programs which allow the use of flexible schedules which in-
2 clude—

3 “(1) designated hours and days during which an
4 employee on such a schedule must be present for work;
5 and

6 “(2) designated hours during which an employee
7 on such a schedule may elect the time of such
8 employee's arrival at and departure from work, solely
9 for such purpose or, if and to the extent permitted, for
10 the purpose of accumulating credit hours to reduce the
11 length of the workweek or another workday.

12 An election by an employee referred to in paragraph (2) shall
13 be subject to limitations generally prescribed to ensure that
14 the duties and requirements of the employee's position are
15 fulfilled.

16 “(b) Notwithstanding any other provision of this sub-
17 chapter, but subject to the terms of any written agreement
18 referred to in section 6130(a) of this title, if the head of an
19 agency determines that any organization within the agency
20 which is participating in a program under subsection (a) is
21 being substantially disrupted in carrying out its functions or is
22 incurring additional costs because of such participation, such
23 agency head may—

24 “(1) restrict the employees' choice of arrival and
25 departure time,

1 “(2) restrict the use of credit hours, or

2 “(3) exclude from such program any employee or
3 group of employees.

4 **“§ 6123. Flexible schedules; computation of premium pay**

5 “(a) For purposes of determining compensation for over-
6 time hours in the case of an employee participating in a pro-
7 gram under section 6122 of this title—

8 “(1) the head of an agency may, on request of the
9 employee, grant the employee compensatory time off in
10 lieu of payment for such overtime hours, whether or
11 not irregular or occasional in nature and notwithstand-
12 ing the provisions of sections 5542(a), 5543(a)(1),
13 5544(a), and 5550 of this title, section 4107(e)(5) of
14 title 38, section 7 of the Fair Labor Standards Act (29
15 U.S.C. 207), or any other provision of law; or

16 “(2) the employee shall be compensated for such
17 overtime hours in accordance with such provisions, as
18 applicable.

19 “(b) Notwithstanding the provisions of law referred to in
20 subsection (a)(1) of this section, an employee shall not be
21 entitled to be compensated for credit hours worked except to
22 the extent authorized under section 6126 of this title or to
23 the extent such employee is allowed to have such hours taken
24 into account with respect to the employee's basic work
25 requirement.

1 “(c)(1) Notwithstanding section 5545(a) of this title, pre-
2 mium pay for nightwork will not be paid to an employee
3 otherwise subject to such section solely because the employee
4 elects to work credit hours, or elects a time of arrival or
5 departure, at a time of day for which such premium pay is
6 otherwise authorized, except that—

7 “(A) if an employee is on a flexible schedule
8 under which—

9 “(i) the number of hours during which such
10 employee must be present for work, plus

11 “(ii) the number of hours during which such
12 employee may elect to work credit hours or elect
13 the time of arrival at and departure from work,
14 which occur outside of the nightwork hours designated
15 in or under such section 5545(a) total less than 8
16 hours, such premium pay shall be paid for those hours
17 which, when combined with such total, do not exceed
18 8 hours, and

19 “(B) if an employee is on a flexible schedule
20 under which the hours that such employee must be
21 present for work include any hours designated in or
22 under such section 5545(a), such premium pay shall be
23 paid for such hours so designated.

24 “(2) Notwithstanding section 5343(f) of this title, and
25 section 4107(e)(2) of title 38, night differential will not be

1 paid to any employee otherwise subject to either of such sec-
2 tions solely because such employee elects to work credit
3 hours, or elects a time of arrival or departure, at a time of
4 day for which night differential is otherwise authorized,
5 except that such differential shall be paid to an employee on
6 a flexible schedule under this subchapter—

7 “(A) in the case of an employee subject to subsec-
8 tion (f) of such section 5343, for which all or a major-
9 ity of the hours of such schedule for any day fall be-
10 tween the hours specified in such subsection, or

11 “(B) in the case of an employee subject to subsec-
12 tion (e)(2) of such section 4107, for which 4 hours of
13 such schedule fall between the hours specified in such
14 subsection.

15 **“§ 6124. Flexible schedules; holidays**

16 “Notwithstanding sections 6103 and 6104 of this title,
17 if any employee on a flexible schedule under section 6122 of
18 this title is relieved or prevented from working on a day des-
19 ignated as a holiday by Federal statute or Executive order,
20 such employee is entitled to pay with respect to that day for
21 8 hours (or, in the case of a part-time employee, an appropri-
22 ate portion of the employee's biweekly basic work require-
23 ment as determined under regulations prescribed by the
24 Office of Personnel Management).

1 **“§ 6125. Flexible schedules; time-recording devices**

2 “Notwithstanding section 6106 of this title, the Office of
3 Personnel Management or any agency may use recording
4 clocks as part of programs under section 6122 of this title,
5 and the Bureau of Engraving and Printing may use recording
6 clocks to record time and attendance of employees of such
7 Bureau without regard to whether the use of recording clocks
8 is part of a program under section 6122 of this title.

9 **“§ 6126. Flexible schedules; credit hours; accumulation**
10 **and compensation**

11 “(a) Subject to any limitation prescribed by the Office of
12 Personnel Management or the agency, a full-time employee
13 on a flexible schedule can accumulate not more than 24
14 credit hours, and a part-time employee can accumulate not
15 more than one-fourth of the hours in such employee's biweek-
16 ly basic work requirement, for carryover from a biweekly pay
17 period to a succeeding biweekly pay period for credit to the
18 basic work requirement for such period.

19 “(b) Any employee who ceases to be subject to a flexible
20 schedule program under section 6122 of this title shall be
21 paid at such employee's then current rate of basic pay for—

22 “(1) in the case of a full-time employee, the
23 number of credit hours accumulated by such employee
24 not exceeding 24 credit hours, or

25 “(2) in the case of a part-time employee, the
26 number of credit hours accumulated by such employee

1 not exceeding one-fourth of the hours in such
2 employee's biweekly basic work requirement.

3 **"§ 6127. Compressed schedules; agencies authorized to use**

4 "(a) Notwithstanding section 6101 of this title, each
5 agency may establish programs which use a 4-day workweek
6 or other compressed schedule.

7 "(b)(1) An employee in a unit with respect to which an
8 organization of Government employees has not been accord-
9 ed exclusive recognition shall not be required to participate in
10 any program under subsection (a) unless a majority of the
11 employees in such unit who, but for this paragraph, would be
12 included in such program have voted to be so included.

13 "(2) Upon written request to any agency by an employ-
14 ee, the agency, if it determines that participation in a pro-
15 gram under subsection (a) would impose a personal hardship
16 on such employee, shall—

17 "(A) except such employee from such program; or

18 "(B) reassign such employee to the first position
19 within the agency—

20 "(i) which becomes vacant after such deter-
21 mination,

22 "(ii) which is not included within such pro-
23 gram,

24 "(iii) for which such employee is qualified,
25 and

1 “(iv) which is acceptable to the employee.

2 A determination by an agency under this paragraph shall be
3 made not later than 10 days after the day on which a written
4 request for such determination is received by the agency.

5 **“§ 6128. Compressed schedules; computation of premium**
6 **pay**

7 “(a) The provisions of sections 5542(a), 5544(a), and
8 5550(2) of this title, section 4107(e)(5) of title 38, section 7
9 of the Fair Labor Standards Act (29 U.S.C. 207), or any
10 other law, which relate to premium pay for overtime work,
11 shall not apply to the hours which constitute a compressed
12 schedule.

13 “(b) In the case of any full-time employee, hours worked
14 in excess of the compressed schedule shall be overtime hours
15 and shall be paid for as provided by the applicable provisions
16 referred to in subsection (a) of this section. In the case of any
17 part-time employee on a compressed schedule, overtime pay
18 shall begin to be paid after the same number of hours of work
19 after which a full-time employee on a similar schedule would
20 begin to receive overtime pay.

21 “(c) Notwithstanding section 5544(a), 5546(a), or
22 5550(1) of this title, or any other applicable provision of law,
23 in the case of any full-time employee on a compressed sched-
24 ule who performs work (other than overtime work) on a tour
25 of duty for any workday a part of which is performed on a

1 Sunday, such employee is entitled to pay for work performed
2 during the entire tour of duty at the rate of such employee's
3 basic pay, plus premium pay at a rate equal to 25 percent of
4 such basic pay rate.

5 “(d) Notwithstanding section 5546(b) of this title, an
6 employee on a compressed schedule who performs work on a
7 holiday designated by Federal statute or Executive order is
8 entitled to pay at the rate of such employee's basic pay, plus
9 premium pay at a rate equal to such basic pay rate, for such
10 work which is not in excess of the basic work requirement of
11 such employee for such day. For hours worked on such a
12 holiday in excess of the basic work requirement for such day,
13 the employee is entitled to premium pay in accordance with
14 the provisions of section 5542(a) or 5544(a) of this title, as
15 applicable, or the provisions of section 7 of the Fair Labor
16 Standards Act (29 U.S.C. 207) whichever provisions are
17 more beneficial to the employee.

18 **“§ 6129. Administration of leave and retirement provisions**

19 “For purposes of administering sections 6303(a), 6304,
20 6307 (a) and (c), 6323, 6326, and 8339(m) of this title, in the
21 case of an employee who is in any program under this sub-
22 chapter, references to a day or workday (or to multiples or
23 parts thereof) contained in such sections shall be considered
24 to be references to 8 hours (or to the respective multiples or
25 parts thereof).

1 **“§ 6130. Application of programs in the case of negotiated**
2 **contracts**

3 “(a) Where employees have selected an exclusive repre-
4 sentative under chapter 71 of this title, chapter 10 of the
5 Foreign Service Act of 1980 (22 U.S.C. 4101 et seq.), or any
6 other provision of law, Executive order, or regulation, the
7 initiation, termination, and provisions of a flexible or com-
8 pressed work schedule shall be subject to the terms of a ne-
9 gotiated contract between the agency and the exclusive rep-
10 resentative. If the agency and the exclusive representative
11 reach impasse over the initiation, termination, or provisions
12 of a flexible or compressed work schedule, the impasse shall
13 be resolved by the Federal Service Impasses Panel under the
14 criteria set forth in section 6131 of this title.

15 “(b) Employees within a unit with respect to which an
16 organization of Government employees has been accorded
17 exclusive recognition shall not be included within any pro-
18 gram under this subchapter except to the extent expressly
19 provided under a written agreement between the agency and
20 such organization.

21 “(c) An agency may not participate in a flexible or com-
22 pressed schedule program under a negotiated contract which
23 contains premium pay provisions which are inconsistent with
24 the provisions of section 6123 or 6128 of this title, as appli-
25 cable.

1 **"§ 6131. Criteria and review**

2 “(a) Notwithstanding any other provision of this sub-
3 chapter (except the provisions of this section and section
4 6130 of this title), an agency shall not establish a flexible or
5 compressed schedule under this subchapter and shall immedi-
6 ately terminate such a schedule that has been established
7 under this subchapter, in any case in which the agency deter-
8 mines on the basis of factual evidence that such a schedule
9 would have or has had the effect of—

10 “(1) reducing the productivity of the agency;

11 “(2) diminishing the level of services furnished to
12 the public by the agency; or

13 “(3) increasing the cost of agency operations.

14 “(b) In any case in which an agency and an organization
15 of Government employees that has been accorded exclusive
16 recognition for a unit of employees in such agency reach an
17 impasse in negotiations with respect to an agency decision
18 not to establish a compressed schedule (including a flexible
19 schedule that, but for the provisions of this subchapter or the
20 Federal Employees Flexible and Compressed Work Sched-
21 ules Act of 1978 (5 U.S.C. 6101 note), would have required
22 the payment of premium pay or night differential), the im-
23 passe shall be presented to the Federal Service Impasses
24 Panel. The Federal Service Impasses Panel shall rule in
25 favor of the agency's decision only if the decision is supported

1 by evidence establishing that the schedule will cause any
2 result described in subsection (a)(1), (a)(2), or (a)(3).

3 “(c)(1) If an agency and an organization of Government
4 employees which has been accorded exclusive recognition for
5 a unit in the agency have entered into a negotiated agree-
6 ment providing for use of a flexible or compressed schedule
7 under this subchapter, the agency may reopen the agreement
8 to seek termination of the schedule established under such
9 agreement at any time the agency determines on the basis of
10 evidence that the schedule has caused any result described in
11 subsection (a)(1), (a)(2), or (a)(3) of this section. Any impasse
12 arising between the agency and the organization of Govern-
13 ment employees with respect to the termination of the sched-
14 ule shall be presented to the Federal Services Impasses
15 Panel.

16 “(2) The Federal Services Impasses Panel shall, not
17 later than 60 days after the date on which the Panel is pre-
18 sented an impasse under paragraph (1) of this subsection, rule
19 on such impasse. The Panel shall rule in favor of the agency
20 only if the agency decision is supported by evidence establish-
21 ing that the schedule which is the subject of the impasse has
22 caused any result described in subsection (a)(1), (a)(2), or
23 (a)(3) of this section.

1 “(d) For the purposes of this section the term ‘Federal
2 Services Impasses Panel’ means the Federal Services Im-
3 passes Panel described in section 7119(c) of this title.

4 **“§ 6132. Prohibition of coercion**

5 “(a) An employee may not directly or indirectly intimi-
6 date, threaten, or coerce, or attempt to intimidate, threaten,
7 or coerce, any other employee for the purpose of interfering
8 with—

9 “(1) such employee’s rights under sections 6122
10 through 6126 of this title to elect a time of arrival or
11 departure, to work or not to work credit hours, or to
12 request or not to request compensatory time off in lieu
13 of payment for overtime hours; or

14 “(2) such employee’s right under section
15 6127(b)(1) of this title to vote whether or not to be in-
16 cluded within a compressed schedule program or such
17 employee’s right to request an agency determination
18 under section 6127(b)(2) of this title.

19 “(b) For the purpose of subsection (a), the term ‘intimi-
20 date, threaten, or coerce’ includes, but is not limited to,
21 promising to confer or conferring any benefit (such as ap-
22 pointment, promotion, or compensation), or effecting or
23 threatening to effect any reprisal (such as deprivation of ap-
24 pointment, promotion, or compensation).

1 **“§ 6133. Regulations; technical assistance; program review**

2 “(a) The Office of Personnel Management shall pre-
3 scribe regulations necessary for the administration of the pro-
4 grams established under this subchapter.

5 “(b)(1) The Office shall provide educational material,
6 and technical aids and assistance, for use by an agency in
7 connection with establishing and maintaining programs under
8 this subchapter.

9 “(2) In order to provide the most effective materials,
10 aids, and assistance under paragraph (1), the Office shall con-
11 duct periodic reviews of programs established by agencies
12 under this subchapter particularly insofar as such programs
13 may affect—

14 “(A) the efficiency of Government operations;

15 “(B) mass transit facilities and traffic;

16 “(C) levels of energy consumption;

17 “(D) service to the public;

18 “(E) increased opportunities for full-time and part-
19 time employment; and

20 “(F) employees’ job satisfaction and nonworklife.

21 “(c) With respect to employees in the Library of Con-
22 gress, the authority granted to the Office of Personnel Man-
23 agement under this subchapter shall be exercised by the Li-
24 brarian of Congress.”.

25 (b) The table of sections at the beginning of such chap-
26 ter is amended—

1 (1) by inserting before the item relating to section
2 6101 the following:

"SUBCHAPTER I—GENERAL PROVISIONS";

3 and

4 (2) by adding at the end thereof the following:

"SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULES

"Sec.

"6120. Purpose.

"6121. Definitions.

"6122. Flexible schedules; agencies authorized to use.

"6123. Flexible schedules; computation of premium pay.

"6124. Flexible schedules; holidays.

"6125. Flexible schedules; time-recording devices.

"6126. Flexible schedules; credit hours; accumulation and compensation.

"6127. Compressed schedules; agencies authorized to use.

"6128. Compressed schedules; computation of premium pay.

"6129. Administration of leave and retirement provisions.

"6130. Application of programs in the case of negotiated contracts.

"6131. Criteria and review.

"6132. Prohibition of coercion.

"6133. Regulations; technical assistance; program review."

5 SEC. 3. Section 3401(2) of title 5, United States Code,
6 is amended by inserting "(or 32 to 64 hours during a biweek-
7 ly pay period in the case of a flexible or compressed work
8 schedule under subchapter II of chapter 61 of this title)"
9 after "week".

10 SEC. 4. Each flexible or compressed work schedule es-
11 tablished by any agency under the Federal Employees Flexi-
12 ble and Compressed Work Schedules Act of 1978 (5 U.S.C.
13 6101 note) in existence on the date of enactment of this Act
14 shall be continued by the agency concerned subject to the
15 review of such schedule by the agency within 90 days after
16 the date of enactment of this Act and such further action as
17 the agency shall take under the second sentence of this sec-

1 tion. If, in reviewing the schedule, the agency determines
2 that the schedule has reduced the productivity of the agency
3 or the level of services to the public or has increased the cost
4 of the agency operations, the agency shall, notwithstanding
5 any provision of a negotiated agreement, immediately termi-
6 nate such schedule and such termination shall not be subject
7 to negotiation or to administrative review (except as the
8 President may provide) or to judicial review.

9 SEC. 5. The amendments made by this Act shall not be
10 in effect after three years after the date of the enactment of
11 this Act.

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